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Intelligence Reforms: Less Than Half A Loaf

Carter and Senate Moves Curb Some Abuses But Sanction Others

By David Wise

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TO EVERY THING there is a season. After the disclosures of CIA and FBI abuses and law-breaking, of assassination plots, domestic spying, break-ins, wiretapping, bugging, mail opening, drug tests on unsuspecting citizens and all the rest, it was inevitable that a period of reform would follow.

President Carter and Congress are now taking their first halting steps in that direction. The president's new executive order on intelligence, and the Senate Intelligence Committee's massive reform bill — which differ in many important respects — are complex, tricky and, taken together, amount to something less than half a loaf. They contain many far-reaching and important reforms, but in some areas they give official sanction to the very abuses they would ostensibly end.

There is, for example, considerable irony in the indictment of former FBI director L. Patrick Gray III and two senior ex-FBI officials for allegedly authorizing break-ins during the search for fugitive members of the Weather Underground. The Carter administration and Attorney General Griffin Bell can only be applauded for finally deciding to prosecute higher-ups in the FBI; it will be up to a jury to determine whether the defendants are guilty. The irony lies in the fact that the president's executive order, issued only two months earlier, would allow break-ins, without a court order, akin to those for which J. Edgar Hoover's successor now faces a possible 10-year prison sentence.

There is, to be sure, an important difference between the break-ins permitted under Carter's order and those with which Gray and the other former FBI officials are charged. The government claims that Gray acted without higher authority; the Carter order allows break-ins only if the president authorizes them in general and if each specific break-in is approved by the attorney general.

Under Carter's order, government break-ins — as well as wiretapping, bugging and television surveillance — are all permitted without a court warrant, if the president gives such general approval and the attorney general decides that the person targeted is probably "an agent of a foreign power." Thus, under the terms of the Carter order, if Attorney General Bell approves FBI break-ins in the search for the Weather people on the ground that they receive financial support from a communist or other foreign country, the present head of the FBI, William H. Webster, could not, as a practical matter, be prosecuted.

These fine distinctions were deliberately blurred or overlooked by J. Wallace LaPrade, the former head of the FBI's New York field office, in his recent defiant blast at Attorney General Bell. LaPrade faces dismissal for his alleged role in the FBI burglaries.

Nevertheless, to the target of a warrantless FBI break-in, it makes little difference whether the government burglars are acting on orders of the head of the FBI or the attorney general. The important fact is that constitutional rights are being violated.

The Paradox of Reform

DESPITE THE LESSONS of the Watergate break-in and the burglary of Daniel Ellsberg's psychiatrist, the executive branch under Carter, no less than Nixon, still clings to the concept that the requirements of "national security" permit an exception to the Fourth Amendment, which was enacted, after all, to prevent government burglaries.

Indeed, Morton H. Halperin, the director of the Center for National Security Studies, believes the Carter order is actually a dangerous step backward. "The order," he noted in the Center publication First Principles, "contains the most explicit and far-reaching claim of an inherent presidential right to intrude without a warrant into areas protected by the Fourth Amendment ever stated publicly by an American president."

That is the paradox of reform. In attempting to set standards and guidelines, both Congress and the president risk giving an official imprimatur to practices that were only whispered about, or winked at, in the past. Carter would be horrified to have his order compared to the infamous Huston plan of the Nixon era, yet that plan, too, permitted "surreptitious entry" for national security. That term is no longer fashionable; both the president's order and the Senate bill speak of "unconsented physical searches." But a black bag job by any name is still a break-in.

The Carter order permits such intrusive police techniques only against an "agent of a foreign power." But this phrase is nowhere defined. And Halperin, himself a victim of the Nixon-Kissinger wiretaps, notes that the FBI and the CIA have often targeted people who were suspected of being Communists and therefore of serving a foreign power. He points out that "the intelligence agencies searched for years for the non-existent foreign inspiration behind the anti-war movement."

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The Senate intelligence reform bill, on which hearings have now begun, was an outgrowth of the detailed investigation into intelligence abuses by the Church Committee, the predecessor of the Senate Intelligence Committee. Unlike the president's order, the Senate reform bill does require a judicial warrant before the government may break in, tap or bug. (Both the order and the bill require a warrant to open mail in the United States.) But the Senate bill would permit the government to examine tax returns, plant informants and use physical surveillance and mail covers without a court warrant in urgent cases, or whenever the Justice Department approved. These police techniques could be used against Americans "reasonably believed" to be engaged in espionage, or "any other clandestine intelligence activity" that violates, or might violate, the law, or in sabotage or terrorism.

Both Carter's order and the Senate reform bill deal with many other aspects of intelligence operations. Both, for example, permit the CIA to continue to conduct covert operations — euphemistically renamed "special activities" — with presidential approval required for each operation. To monitor such operations, which in the past have ranged from overthrowing governments to rigging elections to plotting assassinations, the president has created a special coordinating committee as a successor to the old Forty Committee.

The Senate bill bans covert operations designed to bring about terrorism, mass destruction, famine, floods, epidemics, torture, violation of human rights or the violent overthrow of democratic governments but permits a number of these activities in wartime or in periods of grave "threat" to the national security. And the Senate bill contains nothing to prevent the nonviolent overthrow of a democratic government by the CIA. Thus, the CIA could plan a coup in which a prime minister or president of another country is killed — a violent act for which the CIA could later disclaim responsibility or intent.

The Senate bill bans the peacetime use of "full-time" clergy or missionaries as spies, although they could be used for intelligence purposes in time of war or threat to the nation. The legislation also bars the intelligence use of journalists or executives of U.S. news media organizations. But it would permit the use of free-lance writers or journalists as spies unless they "regularly" contributed to American media. The measure also prohibits intelligence agencies from planting articles or publishing books abroad that are likely to be read or distributed in the United States.

The president's order does not specifically forbid the use of clergy or journalists as spies, although the CIA has issued directives banning the use of clergy and limiting the use of journalists. Both the president's order and the Senate bill prohibit experimentation on human subjects without their informed consent — language aimed chiefly at the CIA's drug and mind-control experiments.

The Senate legislation would establish by law the president's existing Intelligence Oversight Board, a three-person civilian panel with responsibility for watching over the agencies. Under the reform bill, a "whistle-blower" inside CIA may go directly to the board or to other high officials or to Congress to report wrongdoing, and all intelligence agency employes are required to report any illegal acts to their superiors. The attorney general is responsible for seeing that no whistle-blower suffers retaliation — a rather tall order.

"Shut Your Eyes Some"

CONGRESS, as much as presidents, has been responsible for intelligence abuses in the past; the congressional attitude was summed up by Sen. John C. Stennis, who, during a floor debate, praised the CIA as splendid and argued that it was necessary to "shut your eyes some" when dealing with intelligence. The ostrich era is presumably over, for the Senate bill requires the president to notify Congress in advance of all covert operations and to keep the Senate and House intelligence committees "fully and currently informed" of all intelligence activities.

The reform measure contains language designed to prevent a recurrence of the Cointelpro activities of the FBI, a program under which the bureau for 15 years carried out 2,370 plots to disrupt and harass American citizens and their organizations. The bill contains an unprecedented and controversial section, however, permitting intelligence agencies to break federal laws with the approval of the attorney general when necessary to protect against spies or terrorists. Both the Carter order and the Senate reform bill appear to place a great deal of faith in the discretion of the attorney general, despite the fact that one recent occupant of that high office is currently serving a prison sentence.

The Senate bill also redefines the authority of the CIA, giving that agency explicit power to spy and to conduct covert operations overseas, to collect intelligence inside the United States and to operate secret "proprietaries," which are seemingly private business firms or institutions whose actual control by the CIA is hidden. The bill also contains a provision aimed at Philip Agee and other former CIA agents who may be tempted to go public; it provides stiff penalties for former CIA employees who endanger the safety of agents by revealing their identities.

Finally, the Senate bill contemplates a drastic reorganization of the "intelligence community," by creating a super-czar with the title of director of national intelligence, layered on top of the CIA, FBI and other intelligence and police agencies. The director would have control over the budgets, and partial authority over the operations and activities, of the various agencies.

It is not clear, however, that the risks of centralized presidential control over the intelligence agencies outweigh the bureaucratic benefits. One has only to think of Hoover or Gray as czar of all the powerful secret agencies of the government to wonder about the merits of this proposal. Fragmented power is often a better protection of individual liberty.

With all the shortcomings and debatable aspects of the Carter order and the Senate bill, intelligence reform may at last be an idea whose time has come. Congress may fail to act, however, and, at best, it will be a long and arduous task to translate the idea of reform into the reality of laws and rules that protect the constitutional rights of Americans.

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